

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

H.A. GOGARTY, INC.

Case No. 96-12

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997))(the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), against H.A. Gogarty, Inc. ("Gogarty"), a domestic concern resident in the State of Louisiana, based on the allegations set forth in the Proposed Charging Letter, dated January 13, 1998, attached hereto and incorporated herein by this reference;

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997, (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

- 2 -

The Department and Gogarty having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

The Assistant Secretary for Export Enforcement having approved the terms of the Settlement Agreement:

IT IS THEREFORE ORDERED THAT,

FIRST, a civil penalty in the amount of \$5,000 is assessed against Gogarty;

SECOND, Gogarty shall pay to the Department the sum of \$5,000 in the following manner: \$1,250 on or before March 1, 1998; \$1,250 on or before June 1, 1998; \$1,250 on or before September 1, 1998; and \$1,250 on or before December 1, 1998.


THIRD, pursuant to the Debt Collection Act of 1982, as amended (U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due dates specified herein, Gogarty will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

- 3 -

FOURTH, as authorized by Section 11(d) of the Act, the timely payment of the sum of \$5,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Gogarty. Accordingly, if Gogarty should fail to pay the sum of \$5,000 in the manner prescribed by this Order, the undersigned will enter an order under the authority of Section 11(d) of the Act denying all of Gogarty's export privileges for a period of one year from the date of the entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon Gogarty.

This Order is effective immediately.


F. Amanda DeBusk
Assistant Secretary for Export Enforcement
Bureau of Export Administration

Entered this 16th day of March, 1998

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The checks should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The checks should be mailed to:

U.S. Department of Commerce
Bureau of Export Administration
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Miriam Cohen

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that Gogarty may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the dates by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)) and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1997)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed Gogarty is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and Gogarty will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to Gogarty in accordance with section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

UNITED STATES OF AMERICA
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DEPARTMENT OF COMMERCE

In the Matter of

H.A. GOGARTY, INC.

Case No. 96-12

SETTLEMENT AGREEMENT

This agreement is made by and between H.A. Gogarty, Inc. ("Gogarty"), a domestic concern resident in the State of Louisiana, and the United States Department of Commerce ("Department"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the "Act").¹

WHEREAS, the Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, has notified Gogarty of its intention to initiate an administrative proceeding against Gogarty pursuant to Section 11 (c) of the Act by issuing the Proposed Charging Letter, dated January 13, 1997, a copy of

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

- 2 -

which is attached hereto and incorporated herein by this reference;
and

WHEREAS, Gogarty has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Gogarty neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Gogarty agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, Gogarty and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over Gogarty with respect to the matters alleged in the Proposed Charging Letter.

2. In complete settlement of all matters set forth in the Proposed Charging Letter, Gogarty will pay to the Department, in accordance with the appropriate Order, when entered, the amount of \$5,000 in the following manner: \$1,250 on or before March 1, 1998; \$1,250 on or before June 1, 1998; \$1,250 on or before September 1, 1998; and \$1,250 on or before December 1, 1998.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Gogarty. Failure to make payment of this amount, in the manner prescribed in Paragraph 2, shall result in the denial of all of Gogarty's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.
4. Subject to the approval of this Settlement Agreement pursuant to paragraph 9 hereof, Gogarty hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement

Agreement or the appropriate Order, when entered)
including, without limitation, any right to:

- A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by Gogarty pursuant to this Settlement Agreement and the appropriate Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the appropriate Order, when entered.
5. The Department, upon entry of the appropriate Order, will not subsequently initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Gogarty, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.

- 5 -

6. Gogarty understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Gogarty that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the appropriate Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against Gogarty in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the appropriate Order.

H.A. GOGARTY, INC.

Mario Delong

Date: 2-20-98

U.S. DEPARTMENT OF COMMERCE

Dexter M. Price
Dexter M. Price
Acting Director
Office of Antiboycott Compliance

Date: March 2, 1998



A625-12

PROPOSED CHARGING LETTER

January 13, 1998

H.A. Gogarty, Inc.
2800 Veterans Road, Suite 130
Metairie, LA 70002

Case No. 96-12

Gentlemen:

We have reason to believe and charge that you, H.A. Gogarty, Inc., have committed two (2) violations of the Export Administration Regulations, currently codified at 15 C.F.R. Parts 730-774 (1997), (the "Regulations")¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the "Act").²

We charge that you committed one violation of Section 769.2(a) of the former Regulations, in that, with intent to comply with, further, or support an unsanctioned foreign boycott, you, on one occasion, required another person to refuse to do business with persons known or believed to be restricted from having any business relationship with or in a boycotting country, pursuant to a requirement of or a request from, or on behalf of, a boycotting country. We also charge that you committed one violation of Section 769.2(d) of the former Regulations, in that, with intent to comply with, further or support an unsanctioned foreign boycott, you furnished, through an agent, one item of information about another person's business relationships with

¹ The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that the Bureau of Export Administration alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, codified at 15 C.F.R. Parts 730-774, established the procedures that apply to the matters in this letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996, (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



persons known or believed to be restricted from having any business relationships with or in a boycotting country.

We allege that:

1. You are a domestic concern resident in the State of Louisiana and, as such, you are a United States person as defined in Section 760.1(b) of the Regulations.
2. During the period March 1993 through April 1993, you engaged in a transaction involving the sale of United States-origin goods to Lebanon, an activity in the interstate or foreign commerce of the United States as defined in Section 769.1(d) of the former Regulations.
3. In connection with the transaction referred to in paragraph 2 above, on or about March 18, 1993, you received shipping instructions from a customer in the U.S. asking you to obtain a certificate from the shipping company containing the following language:

"WE UNDERTAKE NOT TO LOAD GOODS ON...
SHIPS BLACKLISTED BY THE ISRAELI BOYCOTT
OFFICE..."

4. In connection with the transaction referred to in paragraphs 2 and 3 above, on or about March 26, 1993, you sent documents to a shippers agent in the U.S. which included a request for a certificate containing the following language:

"WE UNDERTAKE NOT TO LOAD GOODS...ON
SHIPS BLACKLISTED BY THE ISRAELI BOYCOTT
OFFICE..."

5. In so doing, you required another person to refuse to do business with persons known or believed to be restricted from having any business relationships with or in a boycotting country, an activity prohibited by Section 769.2(a) of the former Regulations, and not excepted.
6. On or about March 29, 1993, the shippers agent referred to in paragraph 4 above prepared and sent to you a document containing the following language:

"WE UNDERTAKE NOT TO LOAD GOODS...ON
SHIPS BLACKLISTED BY THE ISRAELI BOYCOTT
OFFICE..."

Subsequently, you forwarded the documents containing this language to your customer in the U.S.

7. By forwarding this document, prepared by your agent acting on your instructions, you furnished information about another person's business relationships with or in a boycotting country, an activity prohibited by Section 769.2(d) of the former Regulations, and not excepted.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.³

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel, and under Section 766.18 of the Regulations, to seek a settlement agreement.

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between The Bureau of Export Administration and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matter set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

³ /Administrative sanctions may include any or all the following:

- a. The maximum civil penalty of \$10,000 per violation (see § 764.3(a)(1) of the Regulations);
- b. Denial of export privileges (see § 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice (see § 764.3(a)(3) of the Regulations).

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Jeffrey E.M. Joyner, Esq.

Mr. Joyner can be reached by telephone at (202) 482-5311.

Sincerely,

Dexter M. Price
Acting Director
Office of Antiboycott Compliance